IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 19 of 2005

M/s.Siddhivinayak Construction Co. .. Petitioner

versus

Durgabai Bhaskar Mhatra & ors. .. Respondents

...

Mr.Y.S. Jehagirdar with Mr.Rajan Kakkara for the petitioner.

Mr.Anil Singh with Mr.D.R. Shah for the respondent nos.1 to 9.

CORAM : B.H. MARLAPALLE,J

DATED : 30th August 2005.

P.C.:

1. Heard Mr.Jehagirdar, the learned Sr. Counsel with Mr. Rajan Kakkara for the petitioner and Mr.Singh, learned counsel for the respondents.

2. In L.C. Suit no.1084 of 2004, the following preliminary issues were raised by the defendants and were framed by the Court below:

a) Whether the Court has pecuniary jurisdiction to entertain and try the suit? and

b) Whether the suit is barred by law of limitation?

3. Though the parties did not lead evidence, the suit was posted for recording evidence on the preliminary issues. It appears further that the parties stated before the trial Court that the preliminary issues could be decided on the basis of the arguments advanced by them. The trial Court proceeded to pass the impugned order dated 4th and 5th November 2004 and disposed of the issues framed as preliminary issues.

4. The impugned order from paragraph no.12 onwards thus show that the trial Court opined that the preliminary issues were mixed question of facts and law and therefore, they have to be posted having

regards to the evidence. If that be so, the issues are still alive and are required to be decided after the parties adduce evidence and it cannot be treated that the trial Court has disposed of the preliminary issues. The trial Court will frame these issues and decide the preliminary issues on the basis of the evidence to be adduced by the parties at an appropriate stage.

5. Civil Revision Application is disposed of with the above clarifications.

B.H.MARLAPALLE, J